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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/765,371

01/27/2004

L. Alma Jessop

15818.1.1

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7590

12/13/2006

WORKMAN NYDEGGER  
(F/K/A WORKMAN NYDEGGER & SEELEY)  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/765,371

Applicant(s)

JESSOP ET AL.

Examiner

M. Safavi

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-22 and 32-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16, 32-36, 38-40 and 42 is/are rejected.
- 7) ☒ Claim(s) 17-22, 37, 41 and 43-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Objections***

Claims 42 and 43 are objected to under 37 CFR § 1.75(a) & (c) because of the following informalities: Claim 42, "said first portion and said second portion" lacks antecedent basis within the claim. Also, in claim 43 "said intermediate portion" lacks antecedent basis within the claim. Applicant may wish to amend claim 42 to depend from claim 41 so as to maintain appropriate antecedent basis for "said first portion and said second portion", (as previously with claim 18). Such amendment would also supply appropriate antecedent basis for "said intermediate portion" of claim 43.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-22, 38, 45, and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 38, line 1, to which panel does "said panel" refer? Claim 32 presents a plurality of panels while claim 38 makes reference to a single panel. Therefore it is not clear as to which panel does "said panel" refers.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 11-18 and 32-42 are rejected under 35 U.S.C. 102(b) as being anticipated by McAbee et al. '272.** As for **claims 11, 32, and 39**, Eby '835 discloses, Figs. 1-3 and 9, for example, a plurality of forms 12, 12 or 14, 14 each said form having: a panel 12 or 14 comprising at least one bracket 86, 88 mounted to each of said first end and said second end of said panel; a first bracket, (as along one edge), has a tubular portion from a top surface of said panel towards a bottom surface, while a second bracket, (as along an opposite edge), has a tubular portion extending from said bottom surface towards said top surface; a plurality of stakes 138 slidably cooperating with said plurality of forms, one stake 138 of the plurality of stakes slidably cooperating with two adjacently positioned forms of said plurality of forms when the hole of the first end bracket of one form of the plurality of forms aligns with the hole of the second end bracket of another form of the plurality of forms; and at least one tie or bracket 16 secured to a top of one or more of said forms to maintain a spacing between spaced

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apart and parallel forms of said plurality of forms, (**claims 11, 15, and 32**). At least one skin member 24 can be seen bridging a gap between two of said plurality of forms 21, 22, (**claims 16, 36, 40, and 42**). End member, or bulkhead form, is at 14 of Fig. 1, for example, with bulkhead bracket at 86 or 88. Form 12 can be seen as disposed between first and second flanges, (upper and lower flanges), of each bulkhead bracket, (flanges 40, 42 extend above and below at least a portion of the panel 12 if not extending along an upper most and lower most edge respectively), (**claims 12, 13, 33, 34, and 39**). Hole of bulkhead bracket is as shown in Fig. 1, 2, or 3 with a stake 138 extending therethrough, (**claims 14 and 35**). The form assembly of Eby can be seen as formed of natural or synthetic or composite or metal material, (**claim 38**).

Claims 17-22, 37, 41, and 44-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 43 would be allowable if rewritten to overcome the claim objection(s) under 37 CFR § 1.75(a) & (c), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 11, 32, and 39 have been considered but are moot in view of the new ground(s) of rejection.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

M. Safavi  
December 08, 2006



**MICHAEL SAFAVI**  
**PRIMARY EXAMINER**  
**ART UNIT 354**